

## M'CALL DENIAL IS CONTRADICTED BY HIS FRIEND

Did Know of Franchise  
Fight When He Became  
Chairman, Burr Says.

## CITY'S CASE TAKEN BEFORE HIM AS JUDGE

Commissioner Granted Edison  
Plea Before Court Decided  
Contest, Witness Says.

William P. Burr, former Assistant Corporation Counsel, testifying yesterday in the Thompson legislative committee's investigation of the Public Service Commission, contradicted in an important particular testimony given on Tuesday by Chairman Edward E. McCall of the Public Service Commission.

Mr. McCall had asserted that at the time he became chairman he did not know of the action brought by the city to take up a lighting franchise which the Edison Illuminating Company of Brooklyn and the Amsterdam Electric Light, Heat and Power Company contended belonged to the latter company. These concerns are controlled by the Kings County Electric Light and Power Company, in which Mr. McCall had 387 shares.

Yesterday Mr. Burr declared that in 1911 and 1912 the case came before McCall as Justice of the Supreme Court and that after several motions McCall finally refused to sit in the proceedings because he was financially interested in the Kings County company.

To the examination of Mr. Burr on this line unexpected protest was made by Leroy T. Harkness, assistant counsel for the Public Service Commission. "I object to this," Mr. Harkness said. "This committee must confine itself to the facts of the commission."

"Do you want to go on record as appearing here for the individual commissioners?" demanded Morton E. Lewis, attorney for the Thompson committee. "I hadn't thought of that," Mr. Harkness replied.

Testimony Is Admitted.

"It appears to me," said Mr. Lewis, "that in view of McCall's subsequent action and his testimony yesterday that he knew nothing of this proceeding when he went on the commission, Mr. Burr's testimony is admissible as showing that McCall did have knowledge of it."

"If I am overruled on this point I shall take an exception," said Mr. Harkness.

"You may have it," replied Senator Thompson, the chairman, "but I don't know to what or to whom you can appeal."

Mr. Burr said that he was an Assistant Corporation Counsel from 1904 until July 1, 1914, when he resigned. Mr. Burr had voted for McCall for Mayor, had contributed money to his campaign and had made speeches for him. Less than a month after Burr left the Corporation Counsel's office, in which he had fought the Edison company, not only in the courts but before the Public Service Commission, the latter body took up the application on which no action had been taken for twenty months and approved it.

Mr. Burr gave the history of the franchise litigation. The franchise was granted several years ago to the State Electric Light and Power Company of Brooklyn. In perpetuity, the company failed the Edison company asserted its right to the franchise, but the city contended that it had expired by reason of the State company's failure to carry out its obligations. The city was then engaged in recapturing all franchises which had been abandoned.

Case Called Before McCall.

"The Amsterdam company, opposing our effort to take up this franchise," Mr. Burr said, "took the case into the courts. The case came on for trial before Justice McCall in December, 1911. On motion of Edward W. Hatch, attorney for the other side, Justice McCall allowed the company to amend its complaint, and the case was set down for trial before Justice McCall at the February (1912) term. I moved that the city be permitted to amend its answer, contending that we had been taken by surprise, so the case was put over for trial on April 15. In the amended complaint the Edison company set itself up as the injured party, asserting that it held a lease for the Amsterdam and that it had complied with the terms of the lease."

"Did Judge McCall know what the case was about?" Mr. Burr was asked. "I undoubtedly explained to Judge McCall all I thought was necessary to aid his comprehension in disposing of the case," Mr. Burr replied. "He granted the adjournment I asked. He retained control of the case right up

to the time it went to a referee for decision."

"On the last day the case was before Judge McCall he asked whether the Kings County company was interested. I said it was greatly, but Judge Hatch said it was not. I had all my witnesses and documents in court, ready for trial, but Judge McCall said he felt he was disqualified. He went out of his courtroom to find Justice Greenbaum or have some other judge preside, but he couldn't get any one. So, at the request of Corporation Counsel Watson, the issue was placed in the hands of De Lancey Nicolai referee."

Judge's Name Not on Books.

"When Judge McCall said he was disqualified because he held stock in the Kings County company, Judge Hatch looked over the books and said: 'I don't see your name here.' 'No, you won't find my name there, because I carry the stock in the name of my court officer, Macmillan.'"

Commissioners Malibee and Burr, the latter said, had several talks about the application to the commission to permit the Edison company to purchase the 122 shares of Amsterdam stock, and Malibee told Burr that he "had no hesitation in saying that the commission's consent should not be granted until the litigation before Mr. Nicolai had been decided."

"Well," asked Mr. Harkness, "if the Edison company owned all but 122 of the 5,000 shares of Amsterdam, would the effect would favorable action by the commission have on the city's legal contest?"

"Why, if the Edison company got the consent of the Public Service Commission to purchase the Amsterdam stock, it would have no right to operate the Amsterdam franchise?"

"But assuming that it got the consent to merge, would that have affected the invalidity of the franchise?"

"It was not a question of curing any invalidity. It was a question of curing the Public Service Commission's error in its policy, announced and well understood, which had been adopted by the city authorities for the purpose of recapturing franchises that had been abandoned."

Mr. Harkness, "that a merger would ratify or make good any invalidity of the franchise?"

"It would put the Public Service Commission in the position of allowing it to report these stocks and bonds of the Amsterdam, which were absolutely worthless, and authorizing other stockholders in other corporations to pay for worthless stock."

Terms of Lease Not Known.

Mr. Burr added that the plans of the lease which the Edison asserted it enjoyed over the Amsterdam had never been formulated, and that no one had ever seen or heard of the terms of that lease.

Between July 1, 1914, and the following September Mr. Burr was out of the case. In the interim the commission granted the application. Even Commissioner Malibee, who had fought the application for twenty months, voted for it. It is understood that Mr. Malibee was called in to the stand to explain the change of front on this matter.

When Mr. Burr was cross-examined, "I want to say that I am a friend of Judge McCall and that I do not appear here to contradict him," he said.

Through Vincent Victory, Deputy Assistant Corporation Counsel, it was developed that the Public Service Commission did not notify the Corporation Counsel of its plan to grant the Edison company's application, and that it was not until August 4, 1914, five days after the favorable order had been signed, that information of this action was sent to the Corporation Counsel. The legal question is still before the court. A decision is expected in a few weeks.

Elverson B. Chapman, a former broker, who had the McCall stock account at one time, was the next witness. He was asked if he could produce the books of his company for that period.

Some Books Burned in Barn.

"These books," said Mr. Chapman, "filled half of a railroad car when I had them taken to my farm on Lakeville, Long Island. I put some of them in my barn and the others in a room. I don't know where they are now."

One or two persons began to laugh, whereupon Mr. Chapman added quickly: "But I don't think the books you would want were among those burned. I am willing to aid this committee in having transcripts made of the pages bearing the McCall account, and I would send a representative to Lakeville."

Commissioner Robert C. Wood was again a witness, but he had no recollection of anything that figured importantly in the Edison application. He said he couldn't see what effect the commission's action on the application could have on the litigation, and he was certain the commission had done the correct thing. He said he had known William P. Hatch for fifteen or twenty years; they belong to the same golf club.

Chairman McCall was on the stand during the morning. His examination on the stock matter was referred to the part Attorney Freedman played in it did not produce anything of value.

PENNILESS, SAYS CLEARY

Lawyers Reluctant to Defend Former  
Haverstraw Boss.

W. A. Cleary, former Democratic boss and Town Clerk of Haverstraw, is penniless, his friends say, and will ask the court to assign him counsel as an indigent client when his case is set for trial by Justice Tompkins of the Supreme Court, in New City on December 13. Cleary is charged with theft of public funds.

Cleary has given up hope of obtaining his release. Since Attorney General Woodbury, on behalf of the state, is losing and a duplicate without the memorandum, substituted for its place. The substitute was signed with Rosquist's initials, but he testified they were not in his handwriting.

Victim's Funeral Held Up.

Excusing the inspector for the moment, the District Attorney called Commissioner Lynch back to the stand. "Can you produce the order of January 7?"

"It is being traced in the counsel's office and has not been found yet," replied Lynch.

"What became of the order which Rosquist turned in with the notation on it?"

"It was turned over to the counsel. We've searched all through the office and have not found it so far."

"Did you ever receive a present or other consideration from the owner of this or any other building for delaying action?" Coroner Wagner interposed. "I did not," was the answer. The inquiry was then adjourned until Friday morning at 10 o'clock.

"If we can get hold of that paper," said District Attorney Crosey after the session, "we can tell just who is lying and who is not."

Before the body of George Stanevic, one of the victims of the disaster, was permitted inside of the Roman Catholic Church of Mary Queen of Angels, in Brooklyn, yesterday for the funeral services the church authorities insisted upon excluding a banner carried by the following throng. It read: "Every person taking part in this procession demands that the law prosecute the Diamond candy factory for the loss of life in

## BURNED FACTORY HAD FIRE A DAY BEFORE DISASTER

Two Employees Tell Mar-  
shal Brophy of Blaze  
in Rubbish Barrel.

## OFFICIAL COMPLAINT CHANGED IN RECORD

Original Lost, and Duplicate,  
with Faked Initials, Is Al-  
leged, Was Substituted.

While District Attorney Crosey was hammering away at James M. Lynch, State Industrial Commissioner, yesterday, in an endeavor to prove laxity on the part of the higher officials responsible for the Williams factory fire in which twelve lost their lives, Fire Marshal Brophy and Fire Commissioner Adamson discovered from witnesses in their own investigation that a fire had started in the same factory the day before the fatal conflagration.

Harry Kaufman, a candy-puller, of 14 Moore Street, volunteered the information that the first fire started about 1:30 o'clock last Friday afternoon in a rubbish barrel in the east hallway near the elevators. According to Commissioner Adamson, the fire on Saturday is thought to have started in the same place.

Lucy Volta, a candy-dipper, of 25 Catherine Street, the next witness before Marshal Brophy, also told of the fire on Friday. She said that she and another girl had seen two men carry a burning barrel out of the building. While they were watching, she said, Ethel Diamond, a daughter of the owners of the building, came over and chased them back to work, saying: "No, no, go back to your work."

Fire Marshal Brophy is now trying to get the two men who carried out the burning barrel. They both worked in the factory, according to the witnesses. "Max Volta knew them only as 'Frank' and 'Jim'."

3300 Shops Went Unseen.

Relatives of Bertha Roseman and Lena Goldstein, two of the girl victims of the fire, were put on the stand first to establish proof of their death, and then Commissioner Lynch, whose testimony was contested in the first session of the inquiry, was called. He carried with him complete memoranda of this time, and answered the District Attorney with statistics.

"How many violations of the factory laws were reported last year?" asked Mr. Crosey.

"In the year ended September 30 there were 3,711 in the 1st District," replied Lynch.

"How many of these complied with the law?"

"So, roughly speaking, 3,300 factories remained unsafe during that period," commented the District Attorney. "Is that not a record of 765 violations of the factory regulations were rectified in the same period?"

There was considerable opposition to the rule requiring inclosed stairways. It was that only 12 of 765 violations of the stairway regulations were rectified in the same period.

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## 2 MORE CONVICTS IN PRISON INQUIRY

Pair Connected with Sing  
Sing Assaults Go Before  
the Grand Jury.

## WELFARE LEAGUERS AMONG NEW ARRIVALS

Osborne's Invitation to Come Up  
River To Be Ignored for Pres-  
ent, Says District Attorney.

Joe Rotolo and James Harvey, two of the rapidly increasing delegation of one-time Sing Sing convicts held in the White Plains jail, were examined at length yesterday by the Westchester grand jury, which is conducting an inquiry into the conditions at the prison on the Hudson.

Both these men are connected with assaults committed in the prison, and are believed to be hostile to Warden Osborne. At 10 o'clock, when the jury convened, Deputy Sheriff John Moore brought the two, handcuffed together, from the jail to the room in the District Attorney's office, where the jury members were gathered.

Harvey was questioned first, and Rotolo did not conclude his testimony until 12:30 o'clock, when the jury adjourned for the day.

Three other convicts were added to those assembled in the county prison yesterday. The habeas corpus writs issued on Tuesday by Justice Moroschauer brought from Sing Sing James Connolly, high in the affairs of the Mutual Welfare League, and William B. Trevis, switchboard operator in the warden's office. It is believed that Connolly was summoned so that the jury might inquire into his knowledge of the whereabouts of the missing league court records. The third of yesterday's arrivals was Samuel Serack, an Auburn convict, recently removed from Sing Sing following the disclosure of alleged conditions there.

Eight men, all at one time or another under Mr. Osborne's charge, are now held at White Plains.

In accordance with his usual custom, "Judge" William Willett, the district assistant district attorney, as today's session, was called to the stand by the jury. He was in conference with District Attorney Weeks before the jury convened. During the course of yesterday's investigation he was called several times into the jury room. The remainder of his stay was spent in Mr. Weeks's private office.

It is said that Mr. Weeks's former close association with the Mutual Welfare League and his familiarity with conditions at Sing Sing, coupled with the fact that he possesses more than ordinary intelligence for a convict, have made him invaluable as an aid to the District Attorney in guiding the jury's investigation.

For the first time since the beginning of the investigation Mr. Weeks departed from his stereotyped announcement. "I have nothing to say," he admitted that Rotolo and Harvey had appeared before the jury.

When asked whether the body would be in the near future accept the resignation of Mr. Osborne to visit Sing Sing, he replied that he believed not. Men familiar with court conditions said yesterday that it was certain the investigation would take at least two weeks.

The police also maintained extra vigilance about the Bronx County Court House and other public buildings.

At the Request of  
**Tens of Thousands**  
of persons who waited in vain last week outside the Strand  
Theatre to see

## GERALDINE FARRAR

in the Latest Paramount Feature production  
**"CARMEN"**

By arrangement with Morris Gest, will return to the

## PRINCESS THEATRE

FOR A LIMITED ENGAGEMENT  
Beginning at noon,  
**SATURDAY, NOVEMBER 13TH**

Continuous, noon to 11 P. M.  
SEATS 25c & 50c.

## Madison Square Garden

30th Annual  
Exhibition  
To-Day  
**THOROUGH-  
BRED DAY.**

Admission \$1.00  
Bakery, Hotel, Not Re-  
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1102 Madison.

## CENTURY

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11th St. Most of the day, 11th St.  
THIRD MONTH—MOST OF THE DAY.

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and perhaps more. It was also said  
many other witnesses would be sum-  
moned from Sing Sing. Each man that  
has testified so far has incriminated  
other convicts, many of whom will be  
called for by Mr. Weeks.

Neither the warden nor his lawyer,  
Huntington W. Merchant, appeared at  
White Plains yesterday. Mr. Mer-  
chant said last night that his principal  
had gone to Auburn for the day and  
would probably return to Sing Sing to-  
day, after lecturing in Schenectady  
last night.

As the investigation progresses  
Westchester's interest in the affair is  
quicken. Women of the county, to-  
gether with many others from New  
York, gave yesterday the first definite  
expression of public interest in the  
case. The distribution of pamphlets  
containing the "Crimes Against Criminals," and an appeal  
for loyalty to Warden Osborne in his work.

## CHURCHILL ASSAILS 1916 SCHOOL FUNDS

Says Only a Wizard Could Get  
Along on Reduced Appropriation

Only a wizard could devise a plan to  
reorganize the educational system of  
this city by the first of next year to  
run the schools, with a greater num-  
ber of children and classes, on an ap-  
propriation less than last year's, ac-  
cording to President Churchill of the  
Board of Education.

At a meeting of the board held last  
night Mr. Churchill said he was wor-  
ried how to meet the 1916 necessities  
of the board. He said that the de-  
creased funds should not be permitted  
to reduce educational activities. Mr.  
Churchill turned to him and replied:

"Can you explain how you can have  
600 less than the required \$2,000,000  
and with more children and more  
classes than a year ago, we can avoid  
cutting out the educational activities?"

"I am not now prepared to answer  
that question," said Mr. Churchill. "I  
do feel that we should give the subject  
careful consideration."

"I can assure you," responded Mr.  
Churchill, "the board has been most  
active since it found that it could get  
no more money from the state. We  
have not heard of this in a year. We  
are in regard to cutting teachers' salaries."

## COURT HOUSES GUARDED ON BOMB ANNIVERSARY

Cordon of Police Placed Around  
Public Buildings at Midnight.

A police guard was thrown around  
the Criminal Courts Building, the  
Tomb, Police Headquarters and other  
public buildings and court houses in  
Manhattan and the Bronx on the an-  
niversary of the Haymarket riot in  
Chicago.

All persons who passed through Cen-  
tral Street last night or early this  
morning were closely scrutinized by  
the regular patrolmen on beats and by  
detectives assigned specially to guard  
the Tomb and Criminal Courts Build-  
ing. The order from Commissioner  
Woods instructed them to arrest any  
suspicious persons found loitering in  
the vicinity of public buildings.

The police also maintained extra vigi-  
lance about the Bronx County Court  
House and other public buildings.